

Sponsored by: Councilmember Dan Roach
Requested by: Executive/Parks and Recreation Services

RESOLUTION NO. R2013-82

A Resolution of the Pierce County Council Ratifying the Transfer of Certain County-Owned Surplus Real Property Situated in the Town of Wilkeson, Washington, for Use in Perpetuity as Parks and Recreation Property.

Whereas, Pierce County is the owner of tax parcel numbers 0619286001 and 0619284046 that are legally described in attached Exhibit A; and

Whereas, Pierce County declared tax parcel numbers 0619286001 and 0619284046 as surplus and pursuant to Ordinance No. 2013-21, the County Executive is authorized to pursue disposition by transfer of said properties to the Town of Wilkeson; and

Whereas, pursuant to Section 2.110.120 of the Pierce County Code (PCC), all individually negotiated sales or exchanges of real property equal to or in excess of \$25,000 shall be subject to ratification by resolution of the Council; and

Whereas, Pierce County entered into that certain Real Property Transfer Agreement between Pierce County and the Town of Wilkeson dated July 10, 2013, as shown in attached Exhibit B; and

Whereas, the Town of Wilkeson will accept the tax parcels 0619286001 and 0619284046 for use in perpetuity as parks and recreation property; **Now Therefore**,

BE IT RESOLVED by the Council of Pierce County:

Section 1. The Council hereby ratifies the transfer of County-owned surplus tax parcels 0619286001 and 0619284046 to the Town of Wilkeson. Said parcels are described in Exhibit A, which is attached hereto and incorporated herein by reference (for parks and recreation purposes).

Section 2. The transfer shall be substantially in accordance with the terms set forth in that certain Real Property Transfer Agreement between Pierce County and the Town of Wilkeson dated July 10, 2013, which is attached hereto and incorporated herein by reference as Exhibit B.



1 Section 3. The transfer of surplus tax parcels 0619286001 and 0619284046
2 shall be pursuant to Chapter 2.110 PCC.

3
4 **ADOPTED** this 10th day of September, 2013.

5
6 ATTEST:

PIERCE COUNTY COUNCIL
Pierce County, Washington

7
8
9
10 Denise D. Johnson

11 **Denise D. Johnson**

12 Clerk of the Council

Joyce McDonald

Joyce McDonald

Council Chair



Legal Description of Property

Tax Parcel Number: 0619284046

Legal Description:

SECTION 28 TOWNSHIP 19 RANGE 06 QUARTER 42 :

That portion of the abandoned Burlington Northern Railroad Company former right-of-way located in the Northwest 1/4 of the Southeast 1/4 of Section 28, Township 19 North, Range 6 East, W.M., lying Southerly of John Driver-Hugh-Hughes Road (Railroad Avenue) as identified in Settlement Agreement entered in Pierce County Superior Court Cause No. 93-2-05723-2, except that portion lying Northwesterly of the Southeasterly line of Cedar Street as shown on the Plat of B.N. Addition to the Town of Wilkeson, according to Plat thereof recorded under Recording No. 8012080238, extended Northeasterly and except that portion lying Easterly of the West line of Lot 32 of the Plat of B.N. Addition to the Town of Wilkeson, according to Plat thereof recorded under Recording No. 8012080238, extended Northerly;

Situate in the County of Pierce, State of Washington.

Tax Parcel Number: 0619286001

Legal Description:

SECTION 28 TOWNSHIP 19 RANGE 06 QUARTER 24 :

Lot 1, as shown on Short Plat No. 79-202, filed with the Pierce County Auditor, in Pierce County Washington

Situate in the County of Pierce, State of Washington.



Real Property Transfer Agreement

REAL PROPERTY TRANSFER AGREEMENT (Parks & Recreation Services)

THIS REAL PROPERTY TRANSFER AGREEMENT ("Agreement") is made and entered into as of the Effective Date (defined in Section 24 below) by and between PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington ("Transferor") and the TOWN OF WILKESON, a Washington municipal corporation ("Transferee"). Transferor and Transferee may collectively be referred to hereinafter as "the Parties" or individually as a "Party."

RECITALS

WHEREAS Transferor owns those certain parcels of real property situated within Transferee's boundaries that are legally described in attached **Exhibit A** (collectively "the Property"); and

WHEREAS Transferor acquired the Property for parks and recreation purposes; and

WHEREAS the Property is subject to that certain Deed of Right to Use Land for Public Recreation Purposes between Pierce County, as Grantor, and the State of Washington, as Grantee, recorded December 27, 2001 under Pierce County Auditor's recording number 200112271417 ("Deed of Right"); and

WHEREAS the Property has been declared surplus to Transferor's needs by the Pierce County Executive in accordance Chapter 2.110 of the Pierce County Code; and

WHEREAS the Pierce County Council has adopted Ordinance No. 2013-21 declaring the Property surplus to Transferor's needs and authorizing disposition thereof to Transferee; and

WHEREAS Transferor desires to transfer to Transferee, and Transferee desires to accept from Transferor, the Property, for use in perpetuity as park and recreation property pursuant to the terms, covenants and conditions set forth in this Agreement.

NOW THEREFORE, for and in consideration of the terms, covenants and conditions set forth in this Agreement, Transferor and Transferee agree as follows:

AGREEMENT

1. **Transfer of the Property.** Transferor shall transfer to Transferee, and Transferee shall accept from Transferor, the Property, upon the terms, covenants and conditions set forth in this Agreement.

2. **No Monetary Consideration.** The transfer of the Property by Transferor to Transferee shall be without monetary consideration.

PROPERTY TRANSFER AGREEMENT
Parks&Recreation_PropertyTransferAgreement_TownofWilkeson.docx

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3. **Use of Property by Transferee.** Transferee shall use the Property in perpetuity solely for outdoor parks and recreation purposes for the benefit and general welfare of its residents in strict compliance with the Deed of Right. Transferee shall not do or permit anything to be done in, on, under or about the Property that will or may constitute a violation of this Agreement, the Deed of Right or any statute, law, rule, order, regulation or ordinance affecting all or any part of the Property, or the use thereof, now or hereafter in effect and applicable to the Property.

4. **Form of Conveyance.** Transferor shall transfer the Property to Transferee by Bargain and Sale Deed pursuant to RCW 64.04.040 substantially in the form set forth in attached **Exhibit B** (hereinafter "Bargain and Sale Deed") and containing the following deed restriction:

The Property shall be used by Grantee in perpetuity solely for outdoor parks and recreation purposes for the benefit and general welfare of its residents in strict compliance with that certain Deed of Right to Use Land for Public Recreation Purposes between Pierce County, as Grantor, and the State of Washington, as Grantee, recorded December 27, 2001 under Pierce County Auditor's recording number 200112271417.

5. **Approvals; Termination.**

5.1 **Transferor Approval Resolution.** Transferor shall, within FIVE (5) business days after the Effective Date, submit to the Pierce County Council a resolution (hereinafter "Pierce County Approval Resolution") ratifying and approving this Agreement. Pierce County shall, within FIVE (5) business days after passage of the Pierce County Approval Resolution, notify Transferee thereof in writing (hereinafter "Notice of Passage of Pierce County Approval Resolution"), such notice being conclusive for purposes of this Agreement that Transferor has satisfied this condition. If Transferor fails to deliver Notice of Passage of Pierce County Approval Resolution to Transferee within THIRTY (30) calendar days after the Effective Date, this Agreement shall automatically terminate and neither Party shall have any further rights or remedies against the other except those that expressly survive the termination of this Agreement.

5.2 **Transferee Approval Resolution.** Transferee shall, within FIVE (5) business days after the Effective Date, submit to the Wilkeson a resolution (hereinafter "Wilkeson Approval Resolution") ratifying and approving this Agreement. Transferee shall, within FIVE (5) business days after passage of the Wilkeson Approval Resolution, notify Transferor thereof in writing (hereinafter "Notice of Passage of Wilkeson Approval Resolution"), such notice being conclusive for purposes of this Agreement that Transferee has satisfied this condition. If Transferee fails to deliver the Notice of Passage of Wilkeson Approval Resolution to Transferor within THIRTY (30) calendar days after the Effective Date, this Agreement shall automatically terminate and neither Party shall have any further rights or remedies against the other, except those that expressly survive the termination of this Agreement.



6. **Due Diligence Inspection; Indemnification.** Transferee represents and warrants to Transferor that it has conducted a due diligence inspection of the Property and is satisfied with all aspects thereof including, without limitation, matters affecting title, the geotechnical and physical condition of the Property, the suitability of the Property for Transferee's permitted uses, zoning and other land use issues, and whether there are Hazardous Materials on, in, or under the Property or whether the Property or Transferor are in violation of any Environmental Law. As used in this Agreement, the term "Hazardous Materials" means any hazardous or toxic substances, materials or wastes including, but not limited to, those substances now or hereafter defined or regulated as a hazardous substance, hazardous waste, hazardous material, toxic substance, pollutant, or contaminant under any Environmental Law. As used in this Agreement the term "Environmental Law" includes any federal, state or local law, regulation or ordinance governing any substance or material that could cause actual or suspected harm to human health or to the environment. Transferee shall, as of Closing (defined in Section 8 below), be conclusively deemed to have accepted the Property in "AS IS" condition with "ALL FAULTS," and to have forever released Transferor from all claims, liabilities or demands of any kind, type or nature whatsoever that Transferee may have against Transferor by reason or on account of, or in connection with, or arising out of or in any way relating to, this Agreement or to the Property. In addition, Transferee shall defend, indemnify and hold Transferor harmless from and against any and all environmental claims and liabilities, of whatever nature, arising out of the Transferor's ownership and operation of the Property including, without limitation, sums paid responding to, defending against and in settlement of environmental claims and liabilities, including claims for response or remedial action costs, attorney fees, consultant fees and expert fees, by reason or on account of, or in connection with, or arising out of or in any way relating to: (a) the presence or suspected presence of Hazardous Materials in, on or about the Property; or (b) the migration of Hazardous Materials from or onto the Property; or (c) the violation of any Environmental Law.

7. **No Representations or Warranties.** Except as expressly provided elsewhere in this Agreement, neither Party has made to the other any representation, warranty or agreement of any kind, type or nature whatsoever, express or implied, arising out of or in any way relating to this Agreement or to the Property.

8. **Closing.** "Closing" shall mean the date upon which the Bargain and Sale Deed is recorded by Transferor and shall take place within THIRTY (30) calendar days following receipt by both Parties of the notices described in Sections 5.1 and 5.2 above.

9. **Closing Deliveries.**

9.1 **By Transferor.** On or before Closing, the following documents shall be executed and delivered by Transferor: (a) a duly executed and acknowledged Bargain and Sale Deed; (b) a duly executed and acknowledged Real Estate Excise Tax Affidavit, in the form promulgated by the Washington Department of Revenue, relating to the Bargain and Sale Deed; and (c) such other, further or different documents as may be reasonably required to consummate the transaction contemplated by this Agreement.



9.2 By Transferee. On or before Closing, the following documents shall be executed and delivered by Transferee: (a) a duly executed and acknowledged Real Estate Excise Tax Affidavit, in the form promulgated by the Washington Department of Revenue, relating to the Bargain and Sale Deed; and (b) such other, further or different documents as may be reasonably required to consummate the transaction contemplated by this Agreement.

10. Costs. Transferee shall pay the cost of recording the Bargain and Sale Deed, its own attorney fees, if any, and all other costs and expenses arising out of or in any way relating to the transaction contemplated by this Agreement that are not otherwise specifically allocated to Transferor hereunder. Transferor shall pay its own attorney fees.

11. Notices. Wherever in this Agreement notice is required to be given, such notice shall be in writing, addressed to the person entitled to such notice, and shall be sent by either: (a) United States mail, return receipt requested; (b) recognized overnight express service which customarily maintains a contemporaneous permanent delivery record; or (c) fax to the address of such person as set forth in this Agreement, or such address or addresses designated in writing from time to time. The notice shall be deemed delivered on the earlier of: (a) three (3) business days after deposited in the United States mail; (b) the delivery date as shown in the regular business records of the overnight courier service; or (c) the date of automatic confirmed receipt by the recipient's fax, as the case may be. Notices shall be sent to:

Transferor: Pierce County Parks & Recreation Services
955 Tacoma Avenue South, Suite 212
Tacoma, WA 98402
Telephone: 253-798-6197
Facsimile: 253-798-7401

Copy to: David H. Prather, Deputy Prosecuting Attorney
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160
Telephone: 253-798-4168
Facsimile: 253-798-6713

Transferee: Town of Wilkeson

Telephone: _____
Facsimile: _____

Any party, by written notice to the other in the manner herein provided, may designate an address different from that set forth above. Any notices sent by a party's attorney on behalf of such party shall be deemed delivered by such party.



12. **Negotiation and Construction.** This Agreement was negotiated by the Parties with the assistance of their own legal counsel and shall be construed according to its fair meaning and not strictly for or against either Party.

13. **Time.** Time is of the essence of this Agreement and of every term and provision hereof. If the date for any performance under this Lease falls on a weekend or holiday, the time shall be extended to the next business day.

14. **Prior Agreements.** This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned herein and no prior agreement, letter of intent, negotiation or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended or added to, except by an agreement in writing signed by the Parties or their respective successors in interest.

15. **Attorney Fees and Costs; Venue.** The substantially prevailing party in any action or proceeding between the Parties for the enforcement of this Agreement shall be entitled to recover reasonable costs and attorney fees (including, without limitation, reasonable costs and attorney fees incurred in appellate proceedings, and expenses for witnesses, including expert witnesses), in addition to all other relief to which it may be entitled. The venue of any action arising out of or relating to this Agreement shall be in the Superior Court of Pierce County, Washington.

16. **Severability.** Any provision of this Agreement that which proves to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.

17. **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the laws of the state of Washington.

18. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the purchase and sale of the Property and supersedes all written or oral agreements or understandings, if any. This Agreement may be modified only in writing signed by both parties.

19. **Counterparts.** This Agreement may be signed in two or more counterparts, which taken together shall constitute the complete Agreement.

20. **Facsimile.** Signature to this Agreement by the Parties transmitted via facsimile shall be acceptable and binding.

21. **Survival of Provisions.** The covenants, representations, agreements, terms and provisions contained herein shall survive the Closing and shall not be deemed to have merged with or into the Bargain and Sale Deed.

22. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.



23. **Exhibits.** The following exhibits are attached hereto and by this reference made part of this Agreement as if fully set forth herein:

- Exhibit A** - Legal Description of Property
- Exhibit B** - Form Bargain and Sale Deed

24. **Effective Date.** "Effective Date" means the date upon which Transferor's County Executive shall have signed this Agreement as indicated opposite her name below.

[SIGNATURES & ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGES]



TRANSFEROR'S SIGNATURE PAGE

PIERCE COUNTY, a municipal corporation and political subdivision of the state of Washington:

Approved as to legal form only:

[Signature] 5/21/13
Deputy Prosecuting Attorney Date

Recommended:

[Signature] 6/21/13
Director, Parks & Recreation (Acting) Date

[Signature] 7/2/13
Director, Budget & Finance Date

Final Action:

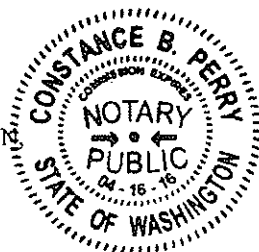
[Signature] 7/10/13
Pierce County Executive Date

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this 10th day of July, 2013, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared PAT MCCARTHY, known to me to be the Executive of Pierce County, Washington corporation, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Signature]
NOTARY SIGNATURE
PRINTED NAME Constance B. Perry
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON
RESIDING AT TACOMA
MY COMMISSION EXPIRES 4-16-2016



TRANSFeree's SIGNATURE PAGE

TOWN OF WILKESON, a Washington municipal corporation:

By: Donna Higgins 6/11/13
Its: Mayor Date

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this 11th day of JUNE, 2013, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared Donna Higgins, known to me to be the Mayor of the Town of Wilkeson, a Washington municipal corporation, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY SIGNATURE [Signature]
PRINTED NAME Jay Scott Smalley
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
RESIDING AT Smalley
MY COMMISSION EXPIRES 6-12-2014

Notary Public
State of Washington
Jay Scott Smalley
Commission Expires 6-12-2014



**EXHIBIT A
(LEGAL DESCRIPTION OF PROPERTY)**

Tax Parcel Number: 0619284046
Legal Description:

SECTION 28 TOWNSHIP 19 RANGE 06 QUARTER 42 :

That portion of the abandoned Burlington Northern Railroad Company former right-of-way located in the Northwest 1/4 of the Southeast 1/4 of Section 28, Township 19 North, Range 6 East, W.M., lying Southerly of John Driver-Hugh-Hughes Road (Railroad Avenue) as identified in Settlement Agreement entered in Pierce County Superior Court Cause No. 93-2-05723-2, except that portion lying Northwesterly of the Southeasterly line of Cedar Street as shown on the Plat of B.N. Addition to the Town of Wilkeson, according to Plat thereof recorded under Recording No. 8012080238, extended Northeasterly and except that portion lying Easterly of the West line of Lot 32 of the Plat of B.N. Addition to the Town of Wilkeson, according to Plat thereof recorded under Recording No. 8012080238, extended Northerly;

Situate in the County of Pierce, State of Washington.

Tax Parcel Number: 0619286001
Legal Description:

SECTION 28 TOWNSHIP 19 RANGE 06 QUARTER 24 :

Lot 1, as shown on Short Plat No. 79-202, filed with the Pierce County Auditor, in Pierce County Washington

Situate in the County of Pierce, State of Washington.



**EXHIBIT A
(LEGAL DESCRIPTION OF PROPERTY)**

Tax Parcel Number: 0619284046

Legal Description:

SECTION 28 TOWNSHIP 19 RANGE 06 QUARTER 42 :

That portion of the abandoned Burlington Northern Railroad Company former right-of-way located in the Northwest 1/4 of the Southeast 1/4 of Section 28, Township 19 North, Range 6 East, W.M., lying Southerly of John Driver-Hugh-Hughes Road (Railroad Avenue) as identified in Settlement Agreement entered in Pierce County Superior Court Cause No. 93-2-05723-2, except that portion lying Northwesterly of the Southeasterly line of Cedar Street as shown on the Plat of B.N. Addition to the Town of Wilkeson, according to Plat thereof recorded under Recording No. 8012080238, extended Northeasterly and except that portion lying Easterly of the West line of Lot 32 of the Plat of B.N. Addition to the Town of Wilkeson, according to Plat thereof recorded under Recording No. 8012080238, extended Northerly;

Situate in the County of Pierce, State of Washington.

Tax Parcel Number: 0619286001

Legal Description:

SECTION 28 TOWNSHIP 19 RANGE 06 QUARTER 24 :

Lot 1, as shown on Short Plat No. 79-202, filed with the Pierce County Auditor, in Pierce County Washington

Situate in the County of Pierce, State of Washington.



Tax Parcel Number: 0619286001

SECTION 28 TOWNSHIP 19 RANGE 06 QUARTER 24 :

Lot 1, as shown on Short Plat No. 79-202, filed with the Pierce County Auditor, in Pierce County Washington

Situate in the County of Pierce, State of Washington.

(hereinafter "Property").

The Property shall be used by GRANTEE in perpetuity solely for outdoor parks and recreation purposes for the benefit and general welfare of its residents in strict compliance with that certain Deed of Right to Use Land for Public Recreation Purposes between Pierce County, as Grantor, and the State of Washington, as Grantee, recorded December 27, 2001 under Pierce County Auditor's recording number 200112271417.

By executing this instrument, GRANTEE agrees to be bound by the terms, covenants and conditions set forth herein.

Dated this ____ of ____, 2013.

[SIGNATURES & ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGES]



GRANTOR'S SIGNATURE PAGE

PIERCE COUNTY, a municipal corporation and
political subdivision of the state of Washington:

By: _____
Pat McCarthy, Pierce County Executive

Approved as to legal form only:

Deputy Prosecuting Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this ____ day of _____, 2013, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared PAT MCCARTHY, known to me to be the Executive of Pierce County, Washington, a municipal corporation, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY SIGNATURE
PRINTED NAME _____
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
RESIDING AT _____
MY COMMISSION EXPIRES _____



GRANTEE'S SIGNATURE PAGE

TOWN OF WILKESON, a Washington municipal corporation:

By: Donna Hegewis 6/11/13
Its: Mayor Date

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

On this 11th day of June, 2013, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared Donna Hegewis, known to me to be the Mayor of the Town of Wilkeson, a Washington municipal corporation, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY SIGNATURE

PRINTED NAME

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,

RESIDING AT

MY COMMISSION EXPIRES

Jay Scott Smalley
Puyallup
6-12-2014

Notary Public
State of Washington
Jay Scott Smalley
Commission Expires 6-12-2014

PROPERTY TRANSFER AGREEMENT

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